

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION**

<b>In re:</b>	§	<b>Chapter 11</b>
	§	
<b>HII TECHNOLOGIES, INC., et al.<sup>1</sup></b>	§	<b>15-60070 (DRJ)</b>
<b>Debtors</b>	§	<b>(Jointly Administered)</b>

**MOTION FOR NOTIFICATION PROCEDURES REGARDING RESTRICTIONS ON  
CERTAIN TRANSFERS OF INTERESTS IN THE DEBTORS**

THIS MOTION SEEKS AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

**To the Honorable David R. Jones, United State Bankruptcy Judge:**

HII Technologies, Inc. (“HII”) and its subsidiaries, as debtors and debtors in possession in these chapter 11 cases (collectively, the “Debtors”), respectfully represent:

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: (i) Apache Energy Services, LLC (4404); (ii) Aqua Handling of Texas, LLC (4480); (iii) HII Technologies, Inc. (3686); (iv) Sage Power Solutions, Inc. fka KMHVC, Inc. (1210); and (v) Hamilton Investment Group, Inc. (0150).

## **BACKGROUND**

1. On September 18, 2015 (the “Commencement Date”), the Debtors filed voluntary petitions under chapter 11 of title 11, United States Code. The cases are jointly administered under Case No. 15-60070.

2. The Debtors had operations in Texas, Oklahoma, Ohio, and West Virginia focused on commercializing technologies and providing services in frac water management, safety services, and portable power used by exploration and production companies throughout the United States. Additional background information on the Debtors may be found in the *First Day Affidavit* (Dkt. #10).

## **JURISDICTION**

3. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (G). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. Relief may be granted under 11 U.S.C. § 362 and 105. The Court has authority to enter final orders on this relief.

## **RELIEF REQUESTED**

4. Debtors request, pursuant to sections 105(a) and 362 of the Bankruptcy Code, entry of an order (the “Order”) establishing procedures as set forth herein to protect the potential value of the NOLs<sup>2</sup> and other tax attributes. A copy of the proposed Order is annexed hereto as **Exhibit B**. The proposed procedures (the “Procedures”) would apply with respect to HII Stock (as defined herein) and any options or similar interests to acquire such stock. The Procedures would impose restrictions and notification requirements, to be effective *nunc pro tunc* to the filing

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<sup>2</sup> Net operating loss carryforwards.

of the Motion (the "Motion Date"). Currently, the shares have been suspended from trading on the OTCQB.

**NET OPERATING LOSS CARRYOVERS ARE ESTATE PROPERTY**

5. The Debtors estimate that, as of the date hereof, they have incurred, for U.S. federal income tax purposes, consolidated NOLs of between \$20 million and \$30 million.<sup>3</sup>

6. The NOLs are valuable assets of the Debtors' estates because the Internal Revenue Code of 1986, as amended (the "Tax Code"), generally permits corporations to carry over their losses and tax credits to offset future income, thereby reducing a debtor's tax liability. *See* 26 U.S.C. §§ 39, 172 and 904(c).

7. The Debtors' ability to use the NOL carryovers to reduce future tax liability is subject to certain statutory limitations. Sections 382 and 383 of the Tax Code limit a corporation's use of its NOLs, tax credits, and certain other tax attributes to offset future income or tax after the corporation experiences an "ownership change."

8. For purposes of section 382, an ownership change generally occurs when the percentage of a loss corporation's equity held by one or more "5% shareholders" (as such term is defined in section 382) increases by more than 50 percentage points over the lowest percentage of stock owned by such shareholder(s) at any time during the relevant testing period (usually three years).

9. A section 382 ownership change prior to any sale of the Debtors' assets would effectively eliminate the ability of the Debtors to use the NOLs, resulting in a significant loss of value. However, the limitations imposed by section 382 in the context of an ownership change

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<sup>3</sup> The Debtors admit that a certain uncertainty exists as to the exact NOL number because a precise, current, tax analysis has not yet been completed.

pursuant to a bankruptcy court order are significantly more relaxed than those applicable outside chapter 11. *See* 26 U.S.C. §§ 382(1)(5), (6).

10. Accordingly, consistent with the automatic stay in these cases, the Debtors need the ability to preclude certain transfers of, and monitor and possibly object to other changes in the ownership of, HII Stock to ensure that a 50% change of ownership does not occur prematurely.

**TRADING PROCEDURES PRESERVE ESTATE NOLs**

11. To preserve the potential value of the NOLs and ensure that the Debtors receive the full benefits of the automatic stay, the Debtors propose the following restrictions and notification requirements effective as of the Motion Date:

***(a) HII Stock Ownership, Acquisition, and Disposition***

- (1) Notice of Substantial HII Stock Ownership. Any person or Entity (as such term is defined in section 382 of the Tax Code, including persons acting pursuant to a formal or informal understanding among themselves to make a coordinated acquisition) that beneficially owns, at any time on or after the Motion Date, HII Stock in an amount sufficient to qualify such person or Entity as a Substantial Equityholder (as hereinafter defined) shall file with the Court, and serve upon the Debtors, and the attorneys for the Debtors, a Notice of Substantial Stock Ownership (a “Substantial Ownership Notice”), in the form annexed hereto as **Exhibit C**, which describes specifically and in detail the HII Stock ownership of such person or Entity, on or before the date that is the later of: (a) ten (10) days after the entry of the Order, and (b) ten (10) days after that person or Entity qualifies as a Substantial Equityholder. At the holder’s election, the Substantial Ownership Notice to be filed with the Court (but not such notice served upon the Debtors and the attorneys for the Debtors) may be redacted to exclude such holder’s taxpayer identification number and the number of shares of HII Stock that such holder beneficially owns.
- (2) Acquisition of HII Stock or Options. At least fifteen (15) business days prior to the proposed date of any transfer of equity securities (including Options, as hereinafter defined, to acquire such securities) that would result in an increase in the amount of HII Stock beneficially owned by any person or Entity that currently is or subsequently becomes a Substantial Equityholder or that would result in a person or Entity becoming a Substantial Equityholder (a “Proposed Equity Acquisition Transaction”), such person, Entity or Substantial Equityholder (a

“Proposed Equity Transferee”) shall file with the Court, and serve upon the Debtors and the attorneys for the Debtors, a Notice of Intent to Purchase, Acquire, or Otherwise Accumulate HII Stock (an “Equity Acquisition Notice”), in the form annexed hereto as **Exhibit D**, which describes specifically and in detail the proposed transaction in which HII Stock is to be acquired. At the holder’s election, the Equity Acquisition Notice that is filed with the Court (but not such notice served upon the Debtors and the attorneys for the Debtors) may be redacted to exclude such holder’s taxpayer identification number and the number of shares of HII Stock that such holder beneficially owns and proposes to purchase or otherwise acquire.

- (3) Disposition of HII Stock or Options. At least fifteen (15) business days prior to the proposed date of any transfer or other disposition of equity securities (including Options to acquire such securities) that would result in a decrease in the amount of HII Stock beneficially owned by a Substantial Equityholder or that would result in a person or Entity ceasing to be a Substantial Equityholder (a “Proposed Equity Disposition Transaction,” and together with a Proposed Equity Acquisition Transaction, a “Proposed Equity Transaction”), such person, Entity, or Substantial Equityholder (a “Proposed Equity Transferor”) shall file with the Court, and serve upon the Debtors and the attorneys for the Debtors, a Notice of Intent to Sell, Trade, or Otherwise Transfer HII Stock (an “Equity Disposition Notice,” and together with an Equity Acquisition Notice, an “Equity Trading Notice”), in the form annexed hereto as **Exhibit E**, which describes specifically and in detail the proposed transaction in which HII Stock would be transferred. At the holder’s election, the Equity Disposition Notice that is filed with the Court (but not such notice served upon the Debtors and the attorneys for the Debtors) may be redacted to exclude such holder’s taxpayer identification number and the number of shares of HII Stock that such holder beneficially owns and proposes to sell or otherwise transfer.
- (4) Objection Procedures. The Debtors shall have ten (10) business days after the filing of an Equity Trading Notice (the “Equity Objection Deadline”) to file with the Court and serve on a Proposed Equity Transferee or a Proposed Equity Transferor, as the case may be, an objection to any proposed transfer of equity securities (including Options to acquire such securities) described in such Equity Trading Notice on the grounds that such transfer may adversely affect the Debtors’ ability to utilize the NOLs (an “Equity Objection”) as a result of an ownership change under section 382 or section 383 of the Tax Code.
- (i) If the Debtors file an Equity Objection by the Equity Objection Deadline, then the Proposed Equity Transaction shall not be effective unless approved by a final and nonappealable order of this Court.
- (ii) If the Debtors do not file an Equity Objection by the Equity Objection Deadline, or if the Debtors provide written authorization to

the Proposed Equity Transferee or the Proposed Equity Transferor, as the case may be, approving the Proposed Equity Transaction, prior to the Equity Objection Deadline, then such Proposed Equity Transaction may proceed solely as specifically described in the Equity Trading Notice. Any further Proposed Equity Transaction must be the subject of additional notices as set forth herein with an additional fifteen (15) business day waiting period.

- (5) Unauthorized Transactions in HII Stock or Options. Effective as of the date of the filing of this Motion and until further order of the Court to the contrary, any acquisition, disposition or other transfer of equity securities (including Options to acquire such securities) of the Debtors in violation of the procedures set forth herein shall be null and void *ab initio* as an act in violation of the automatic stay under sections 105(a) and 362 of the Bankruptcy Code.
- (6) Definitions. For purposes of this Motion and the Order, the following terms have the following meanings:
- (i) Substantial Equityholder. A “Substantial Equityholder” is any person or Entity that beneficially owns at least 2,578,673 shares of HII Stock (representing approximately 4.5% of all issued and outstanding shares of HII Stock as of May 20, 2015).
  - (ii) Beneficial Ownership. “Beneficial ownership” (or any variation thereof of HII Stock and Options to acquire HII Stock) shall be determined in accordance with applicable rules under section 382 of the Tax Code, the U.S. Department of Treasury regulations (“Treasury Regulations”) promulgated thereunder and rulings issued by the Internal Revenue Service, and, thus, to the extent provided in those rules, from time to time shall include, without limitation, (A) direct and indirect ownership (*e.g.*, a holding company would be considered to beneficially own all stock owned or acquired by its subsidiaries), (B) ownership by a holder’s family members and any group of persons acting pursuant to a formal or informal understanding to make a coordinated acquisition of stock, and (C) in certain cases, the ownership of an Option to acquire HII Stock.
  - (iii) Option. An “Option” to acquire stock includes any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest regardless of whether it is contingent or otherwise not currently exercisable.
  - (iv) HII Stock. “HII Stock” shall mean HII common stock.<sup>4</sup> For the avoidance of doubt, by operation of the definition of beneficial

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<sup>4</sup> In May 2015, HII closed on a Series B convertible preferred equity financing, which was to convert into debt upon default under the primary loan agreements. Thus, the Series B is not considered equity for the purpose of this Motion. Counsel for the Series B Purchaser has been served with this Motion.

ownership, an owner of an Option to acquire HII Stock may be treated as the owner of such HII Stock.

**(b) *Noncompliance with the Trading Procedures.***

Any purchase, sale, or other transfer of equity securities in the Debtors in violation of the procedures set forth herein shall be null and void *ab initio* and shall confer no rights on the transferee.

**(c) *Debtors' Right to Waive.***

The Debtors may waive, in writing, any and all restrictions, stays, and notification procedures contained in this Motion.

**THE AUTOMATIC STAY BARS ANY EQUITY TRANSFERS THAT WOULD DIMINISH OR LIMIT THE DEBTORS' INTEREST IN THE NOLs**

12. Section 362(a) of the Bankruptcy Code operates as a stay of, among other things, “any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.” 11 U.S.C. § 362(a)(3). Accordingly, “where a non-debtor’s action with respect to an interest that is intertwined with that of a bankrupt debtor would have the legal effect of diminishing or eliminating property of the bankrupt estate, such action is barred by the automatic stay.” *Official Committee of Unsecured Creditors v. PSS Steamship Co. (In re Prudential Lines Inc.)*, 928 F.2d 565 (2d Cir. 1991).

13. It is well established that a debtor’s NOLs are property of the debtor’s estate which is protected by section 362 of the Bankruptcy Code. *See Nisselson v. Drew Indus., Inc. (In re White Metal Rolling & Stamping Corp.)*, 222 B.R. 417, 424 (Bankr. S.D.N.Y. 1998) (“It is beyond peradventure that NOL carrybacks and carryovers are property of the estate of the loss corporation that generated them.”). The United States Court of Appeals for the Second Circuit, in its seminal *Prudential Lines* decision, affirmed the application of the automatic stay and upheld a permanent injunction prohibiting a parent corporation from taking a worthless stock deduction for the stock of its debtor subsidiary because doing so would have adversely affected the subsidiary’s

ability to use its NOLs under the special relief provisions of section 382 of the Tax Code. 928

F.2d 565. The Second Circuit stated:

Including NOL carryforwards as property of a corporate debtor's estate is consistent with Congress' intention to "bring anything of value that the debtors have into the estate." Moreover, "[a] paramount and important goal of Chapter 11 is the rehabilitation of the debtor by offering breathing space and an opportunity to rehabilitate its business and eventually generate revenue."

Including the right to a NOL carryforward as property of [the debtor's] bankruptcy estate furthers the purpose of facilitating the reorganization of [the debtor].

*Id.* at 573 (internal citations omitted); *see also Gibson v. United States (In re Russell)*, 927 F.2d 413, 417 (8th Cir. 1991) (concluding the "right to carry forward the [debtor's] NOLs" was a "property interest" of the estate). In *Prudential Lines*, the Second Circuit further held that the parent corporation's attempt to claim a worthless stock deduction in stock of its debtor subsidiary effectively would eliminate the value of the debtor's NOLs and thus, would be an act to exercise control over estate property in violation of section 362 of the Bankruptcy Code. *Prudential Lines*, 928 F.2d at 573-574.

14. In *Prudential Lines*, the parent corporation's interest in its worthless stock deduction was intertwined with the debtor's NOLs. The Second Circuit determined that, if the parent were permitted to take a worthless stock deduction, it would have an adverse impact on the debtor subsidiary's ability to carry forward its NOLs. Therefore, the Second Circuit noted that, "despite the fact that the [parent corporation's] action is not directed specifically at [the debtor subsidiary], it is barred by the automatic stay as an attempt to exercise control over property of the estate." *Id.*

15. The Second Circuit also held that the permanent injunction was supported by the court's equitable powers pursuant to section 105(a) of the Bankruptcy Code, which authorizes the



court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of ” the Bankruptcy Code. Because the NOLs were valuable assets of the debtor, the Second Circuit refused to disturb the bankruptcy court’s determination that elimination of the right to apply its NOLs to offset income on future tax returns would impede the debtor’s reorganization. *Prudential Lines*, 928 F.2d at 574.

16. Similarly, in *In re Phar-Mor, Inc.*, 152 B.R. 924 (Bankr. N.D. Ohio 1993), the chapter 11 debtors moved to prohibit the transfer of their stock that could have an adverse effect on their ability to use NOLs. The court held that the NOLs qualified as property of the estate and issued an injunctive order to enforce the automatic stay and protect the assets of the debtors’ estates. Significantly, the court granted the relief requested even though the stockholders did not state any intent to sell their stock and even though the debtors did not show that a sale was pending that would trigger the prescribed ownership change under section 382 of the Tax Code. *Id.* at 927. Despite the “ethereal” nature of the situation, the court observed that “[w]hat is certain is that the *NOL has a potential value, as yet undetermined*, which will be of benefit to creditors and will assist debtors in their reorganization process. This asset is entitled to protection while debtors move forward toward reorganization.” *Id.* (emphasis added). The court also concluded that, because the debtors were seeking to enforce the stay, they did not have to meet the more stringent requirements for preliminary injunctive relief:

The requirements for enforcing an automatic stay under 11 U.S.C. § 362(a)(3) do not involve such factors as lack of an adequate remedy at law, or irreparable injury, or loss and a likelihood of success on the merits. The key elements for a stay . . . are the existence of property of the estate and the enjoining of all efforts by others to obtain possession or control of property of the estate.

*Id.* at 926 (quoting *In re Golden Distribs., Inc.*, 122 B.R. 15, 19 (Bankr. S.D.N.Y. 1990)).

17. In short, it is well established that the automatic stay under section 362(a)(3) of the Bankruptcy Code enjoins actions that would adversely affect a debtor's NOLs and other tax attributes. These actions, including the trading of stock in and claims against a debtor, may be determined to be null and void *ab initio*.

**THE PROPOSED PROCEDURES ARE NECESSARY AND IN THE  
BEST INTERESTS OF THE DEBTORS, THEIR ESTATES, AND CREDITORS**

18. The proposed procedures are necessary to preserve the ability of the Debtors to use the NOLs, which are valuable assets of the Debtors' estates, while providing latitude for trading in interests below specified levels. The Debtors' ability to meet the requirements of the tax laws to preserve the NOLs may be seriously jeopardized unless procedures are established to ensure that trading in certain interests in the Debtors are either precluded or closely monitored and made subject to Court approval. However, the Debtors recognize that trading in HII Stock below specified levels may not, under certain circumstances, pose a serious risk to the Debtors' NOLs, and thus the Debtors preserve the ability to waive in writing, in appropriate circumstances, any and all restrictions, stays, and notification procedures contained in this Motion.

19. Absent an ownership change under section 382 of the Tax Code, the Debtors may use the NOLs to offset future income and eliminate future income tax liability in connection with the wind-down or disposition of their remaining assets. Thus, the NOLs are valuable assets of the Debtors' estates and are entitled to the protection of the automatic stay, and the exercise of this Court's equitable powers under section 105(a) is appropriate.

20. The relief requested herein is narrowly tailored to permit certain stock trading to continue, subject to Bankruptcy Rule 3001(e) and applicable securities, corporate, and other laws. The Debtors hereby are seeking only to enforce the provisions of the automatic stay in connection

with certain types of stock trading that pose a serious risk under the ownership change tests and to monitor (with limited circumspections) other types of trading that potentially pose a serious risk.

21. The proposed restrictions on stock trading are crucial because once an interest is transferred the transaction arguably might not be reversible for tax purposes, though it should be null and void under Bankruptcy Code section 362. Accordingly, once a transfer acts to limit the Debtors' ability to use their NOLs under section 382 of the Tax Code, such ability may be permanently lost. The relief requested is, therefore, critical to prevent an irrevocable loss of the Debtors' use of their NOLs.

22. It is in the best interests of the Debtors and their stakeholders to restrict stock trading that could result in an ownership change under section 382 of the Tax Code.

**APPROVAL SHOULD BE GRANTED**

23. Approval will benefit the Debtors and their stakeholders by preventing the loss of the NOLs.

24. The Debtors propose to serve this Motion and the Procedures Notice (in the form annexed hereto as **Exhibit A**) describing the proposed trading restrictions and notification requirements to all parties listed on the Debtors' Master Service List.<sup>5</sup> In addition, the Debtors propose to cause Garden City to send this Motion and the Procedures Notice to all registered holders of HII Stock. Within five (5) business days of receipt, all registered holders shall be required to provide the Motion and Procedures Notice to all beneficial owners for whose accounts such registered holder holds. The Debtors also propose to file an 8-k with the SEC and have the Noticing Agent (Garden City Group) post this Motion and the Procedures Notice on Garden City's website at <http://www.gardencitygroup.com/cases/HII>.

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<sup>5</sup> The Debtors' Master Service List is more fully defined in the Order Establishing Notice Procedures, ECF Dkt. #31, and the current version of the Debtors' Master Service List is at ECF Dkt. #43.

25. The deadline to file an objection (“Objection”) to this Motion shall be 5:00 p.m. (Central Time) seven (7) business days prior to the date of the hearing to consider the relief requested in the Motion (the “Objection Deadline”). Unless otherwise ordered by the Court, a reply to an Objection may be filed with the Court and served on or before 12:00 noon (Central Time) no later than two (2) business days before the date of the hearing.

26. If no Objections are timely filed and served, as set forth herein, the Debtors shall, on or after the Objection Deadline, submit to the Court the proposed Order, which Order shall be submitted and may be entered with no further notice or opportunity to be heard afforded to any party. If an Objection is timely filed, a hearing will be held before the United States Bankruptcy Court for the Southern District of Texas, 515 Rusk Avenue, Houston, Texas at least twenty (20) days after service of this Motion and the Procedures Notice.

27. If approved, any acquisition or disposition of HII Stock as of the date of the Motion in violation of the procedures set forth above shall be null and void *ab initio* as an act in violation of the automatic stay prescribed by section 362 of the Bankruptcy Code and pursuant to this Court’s equitable power prescribed in section 105(a) of the Bankruptcy Code.

28. Following the entry of the Order, Debtors propose to instruct Garden City to send the Order to all registered holders of HII Stock. Upon receipt of the Order, all registered holders shall be required to provide the Order to all beneficial holders for whose accounts such registered holder holds. The Order will also be posted on the Garden City website at <http://www.gardencitygroup.com/cases/HII>.

29. The Debtors submit that the foregoing constitutes a sufficient and cost-effective way of providing notice. The foregoing notice procedures satisfy due process and the strictures of Bankruptcy Rule 9014 by providing the counterparties with notice and an opportunity to object

and be heard at a hearing. *See, e.g., Harada v. DBL Liquidating Trust (In re Drexel Burnham Lambert Group, Inc.)*, 160 B.R. 729, 733 (S.D.N.Y. 1993) (indicating that an opportunity to present objections satisfies due process); *see also Atamian v. U.S. Dep't of Educ. (In re Atamian)*, 368 B.R. 375, 378 (Bankr. D. Del. 2007), *aff'd*, No. 05-20040 (MFW), 2008 WL 853462 (D. Del. Mar. 31, 2008), *aff'd*, No. 08-2026, 2008 WL 5007392 (3d Cir. Nov. 26, 2008) (“Rule 9014 does not require a hearing, only an opportunity for a hearing.”). Furthermore, the proposed notice procedures protect the due process rights of the parties in interest without unnecessarily exposing the Debtors’ estates to unwarranted administrative expenses.

**NOTICE WILL BE PROVIDED TO SHAREHOLDERS**

30. As described herein, notice of this Motion has been provided to the parties listed on the Debtors’ Master Service List. In addition, the Debtors have engaged the Noticing Agent to send this Motion and the Procedures Notice to all registered holders of HII Stock.

WHEREFORE, the Debtors respectfully request entry of an order granting the relief requested herein and such other and further relief as is just.

Dated: September 28, 2015.

**McKool Smith, P.C.**

By: /s/ Benjamin W. Hugon  
Hugh M. Ray, III  
State Bar No. 24004246  
Christopher D. Johnson  
State Bar No. 24012913  
Benjamin W. Hugon  
State Bar No. 24078702  
600 Travis, Suite 7000  
Houston, Texas 77002  
Tel: 713-485-7300  
Fax: 713-485-7344

***Proposed Counsel for the Debtors and  
Debtors-in-Possession***

**CERTIFICATE OF SERVICE**

I certify that, on September 28, 2015, a true and correct copy of the foregoing was served via ECF on all parties who receive service in these bankruptcy cases via electronic case filing. An additional certificate of service will follow showing service upon 1) the Master Service List and 2) the registered holders of equity interests.

/s/ *Ben Hugon*

Ben Hugon

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION**

<b>In re:</b>	§	<b>Chapter 11</b>
	§	
<b>HII TECHNOLOGIES, INC., et al.<sup>1</sup></b>	§	<b>15-60070 (DRJ)</b>
<b>Debtors</b>	§	<b>(Jointly Administered)</b>

**NOTICE OF PROPOSED ORDER ESTABLISHING NOTIFICATION  
PROCEDURES AND APPROVING RESTRICTIONS ON CERTAIN  
TRANSFERS OF INTERESTS IN THE DEBTORS' ESTATES**

**TO ALL PERSONS OR ENTITIES WITH EQUITY INTERESTS IN THE DEBTORS:<sup>2</sup>**

PLEASE TAKE NOTICE that on September 18, 2015 (the "Commencement Date"), HII Technologies, Inc. ("HII") and certain of its subsidiaries and affiliates, as debtors and debtors in possession (collectively, the "Debtors") commenced a case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). Section 362(a) of the Bankruptcy Code operates as a stay of any act to obtain possession of property of the Debtors' estates or of property from the Debtors' estates or to exercise control over property of the Debtors' estates.

PLEASE TAKE FURTHER NOTICE that a hearing will be held on October 26, 2015, at 2:30 pm, in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court"), where the Debtors will request entry of an order (i) finding that the Debtors' net operating loss carryforwards ("NOLs") and other tax attributes are property of the Debtors' estates and are protected by section 362(a) of the Bankruptcy Code; (ii) finding that trading in HII common stock (the "HII Stock") could severely limit the Debtors' ability to use the NOLs for purposes of the Internal Revenue Code of 1986, as amended (the "Tax Code"); and (iii) approving the procedures as set forth herein to preserve the NOLs pursuant to sections 105(a) and 362(a) of the Bankruptcy Code retroactively effective as of the Motion Date (the "Order").

Debtors will request that the following procedures and restrictions be approved by the Bankruptcy Court and shall apply to holding and trading in HII Stock:

- (1) Notice of Substantial HII Stock Ownership. Any person or Entity (as such term is defined in section 382 of the Tax Code, including persons acting pursuant to a formal or informal understanding among themselves to make a coordinated acquisition) that beneficially owns, at any time on or after the Motion Date, HII Stock in an amount sufficient to qualify

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number, are: (i) Apache Energy Services, LLC (4404); (ii) Aqua Handling of Texas, LLC (4480); (iii) HII Technologies, Inc. (3686); (iv) Sage Power Solutions, Inc. fka KMHVC, Inc. (1210); and (v) Hamilton Investment Group, Inc. (0150).

<sup>2</sup> All capitalized terms not expressly defined herein shall have the meaning ascribed to them in the Motion.

such person or Entity as a Substantial Equityholder (as hereinafter defined) shall file with the Court, and serve upon the Debtors, and the attorneys for the Debtors, a Notice of Substantial Stock Ownership (a “Substantial Ownership Notice”), in the form annexed hereto as **Exhibit C**, which describes specifically and in detail the HII Stock ownership of such person or Entity, on or before the date that is the later of: (a) ten (10) days after the entry of the Order, and (b) ten (10) days after that person or Entity qualifies as a Substantial Equityholder. At the holder’s election, the Substantial Ownership Notice to be filed with the Court (but not such notice served upon the Debtors and the attorneys for the Debtors) may be redacted to exclude such holder’s taxpayer identification number and the number of shares of HII Stock that such holder beneficially owns.

- (2) Acquisition of HII Stock or Options. At least fifteen (15) business days prior to the proposed date of any transfer of equity securities (including Options, as hereinafter defined, to acquire such securities) that would result in an increase in the amount of HII Stock beneficially owned by any person or Entity that currently is or subsequently becomes a Substantial Equityholder or that would result in a person or Entity becoming a Substantial Equityholder (a “Proposed Equity Acquisition Transaction”), such person, Entity or Substantial Equityholder (a “Proposed Equity Transferee”) shall file with the Court, and serve upon the Debtors and the attorneys for the Debtors, a Notice of Intent to Purchase, Acquire, or Otherwise Accumulate HII Stock (an “Equity Acquisition Notice”), in the form annexed hereto as **Exhibit D**, which describes specifically and in detail the proposed transaction in which HII Stock is to be acquired. At the holder’s election, the Equity Acquisition Notice that is filed with the Court (but not such notice served upon the Debtors and the attorneys for the Debtors) may be redacted to exclude such holder’s taxpayer identification number and the number of shares of HII Stock that such holder beneficially owns and proposes to purchase or otherwise acquire.
- (3) Disposition of HII Stock or Options. At least fifteen (15) business days prior to the proposed date of any transfer or other disposition of equity securities (including Options to acquire such securities) that would result in a decrease in the amount of HII Stock beneficially owned by a Substantial Equityholder or that would result in a person or Entity ceasing to be a Substantial Equityholder (a “Proposed Equity Disposition Transaction,” and together with a Proposed Equity Acquisition Transaction, a “Proposed Equity Transaction”), such person, Entity, or Substantial Equityholder (a “Proposed Equity Transferor”) shall file with the Court, and serve upon the Debtors and the attorneys for the Debtors, a Notice of Intent to Sell, Trade, or Otherwise Transfer HII Stock (an “Equity Disposition Notice,” and together with an Equity Acquisition Notice, an “Equity Trading Notice”), in the form annexed hereto as **Exhibit E**, which describes specifically and in detail the proposed



transaction in which HII Stock would be transferred. At the holder's election, the Equity Disposition Notice that is filed with the Court (but not such notice served upon the Debtors and the attorneys for the Debtors) may be redacted to exclude such holder's taxpayer identification number and the number of shares of HII Stock that such holder beneficially owns and proposes to sell or otherwise transfer.

- (4) Objection Procedures. The Debtors shall have ten (10) business days after the filing of an Equity Trading Notice (the "Equity Objection Deadline") to file with the Court and serve on a Proposed Equity Transferee or a Proposed Equity Transferor, as the case may be, an objection to any proposed transfer of equity securities (including Options to acquire such securities) described in such Equity Trading Notice on the grounds that such transfer may adversely affect the Debtors' ability to utilize the NOLs (an "Equity Objection") as a result of an ownership change under section 382 or section 383 of the Tax Code.
- (i) If the Debtors file an Equity Objection by the Equity Objection Deadline, then the Proposed Equity Transaction shall not be effective unless approved by a final and nonappealable order of this Court.
- (ii) If the Debtors do not file an Equity Objection by the Equity Objection Deadline, or if the Debtors provide written authorization to the Proposed Equity Transferee or the Proposed Equity Transferor, as the case may be, approving the Proposed Equity Transaction, prior to the Equity Objection Deadline, then such Proposed Equity Transaction may proceed solely as specifically described in the Equity Trading Notice. Any further Proposed Equity Transaction must be the subject of additional notices as set forth herein with an additional fifteen (15) business day waiting period.
- (5) Unauthorized Transactions in HII Stock or Options. Effective as of the date of the filing of this Motion and until further order of the Court to the contrary, any acquisition, disposition or other transfer of equity securities (including Options to acquire such securities) of the Debtors in violation of the procedures set forth herein shall be null and void *ab initio* as an act in violation of the automatic stay under sections 105(a) and 362 of the Bankruptcy Code.
- (6) Definitions. For purposes of this Motion and the Order, the following terms have the following meanings:
- (i) Substantial Equityholder. A "Substantial Equityholder" is any person or Entity that beneficially owns at least 2,578,673 shares of HII Stock (representing approximately 4.5% of all issued and outstanding shares of HII Stock as of May 20, 2015).
- (ii) Beneficial Ownership. "Beneficial ownership" (or any variation thereof of HII Stock and Options to acquire HII Stock) shall be determined in accordance with applicable rules under section 382

of the Tax Code, the U.S. Department of Treasury regulations (“Treasury Regulations”) promulgated thereunder and rulings issued by the Internal Revenue Service, and, thus, to the extent provided in those rules, from time to time shall include, without limitation, (A) direct and indirect ownership (*e.g.*, a holding company would be considered to beneficially own all stock owned or acquired by its subsidiaries), (B) ownership by a holder’s family members and any group of persons acting pursuant to a formal or informal understanding to make a coordinated acquisition of stock, and (C) in certain cases, the ownership of an Option to acquire HII Stock.

- (iii) Option. An “Option” to acquire stock includes any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest regardless of whether it is contingent or otherwise not currently exercisable.
- (iv) HII Stock. “HII Stock” shall mean HII common stock.<sup>3</sup> For the avoidance of doubt, by operation of the definition of beneficial ownership, an owner of an Option to acquire HII Stock may be treated as the owner of such HII Stock.

PLEASE TAKE FURTHER NOTICE that any person or entity desirous of objecting to approval of the Motion must file an objection by 5:00 p.m. (Central Time) seven (7) business days prior to the date of the hearing to consider the relief requested in the Motion. An objection to approval of the Motion **SHALL BE FILED** with all parties listed on the Debtor’s Master Service List, ECF Docket #43, **SO AS TO BE RECEIVED NO LATER THAN 5:00 P.M. (CENTRAL TIME) SEVEN (7) BUSINESS DAYS PRIOR TO THE DATE OF THE HEARING TO CONSIDER THE RELIEF REQUESTED IN THE MOTION.**

PLEASE TAKE FURTHER NOTICE that the requirements set forth in this Notice are in addition to the requirements of Bankruptcy Rule 3001(e) and applicable securities, corporate, and other laws, and do not excuse compliance therewith.

SIGNED: \_\_\_\_\_, 2015.

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UNITED STATES BANKRUPTCY JUDGE

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<sup>3</sup> In May 2015, HII closed on a Series B convertible preferred equity financing, which was to convert into debt upon default under the primary loan agreements. Thus, the Series B is not considered equity for the purpose of this Motion. Counsel for the Series B Purchaser has been served with this Motion.

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION**

<b>In re:</b>	§	<b>Chapter 11</b>
	§	
<b>HII TECHNOLOGIES, INC., et al.<sup>1</sup></b>	§	<b>15-60070 (DRJ)</b>
<b>Debtors</b>	§	<b>(Jointly Administered)</b>

**ORDER ESTABLISHING NOTIFICATION PROCEDURES  
AND APPROVING RESTRICTIONS ON CERTAIN TRANSFERS OF  
INTERESTS IN THE DEBTORS' ESTATES**

Upon the Motion, dated September 28, 2015 (the "Motion"),<sup>2</sup> of HII Technologies, Inc. ("HII") and certain of its subsidiaries, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the "Debtors"), pursuant to sections 362 and 105(a) of title 11, United States Code (the "Bankruptcy Code"), for entry of an order (the "Order") to (i) establish notification procedures and approve restrictions on certain transfers of interests in the Debtors' estates, as more fully described in the Motion, and (ii) schedule a hearing; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and it appearing that no other or further notice need be provided; and a hearing having been held to consider the relief requested in the Motion (the "Hearing"); and upon the record of the Hearing and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is:

FOUND that the Debtors' net operating loss carryforwards ("NOLs") and certain other tax attributes are property of the Debtors' estates and are protected by section 362(a) of the Bankruptcy Code; and it is further

FOUND that unrestricted trading in HII Stock (as hereinafter defined) could severely limit the Debtors' ability to use the NOLs for purposes of the Internal Revenue Code of 1986, as amended (the "Tax Code"), as set forth in the Motion; and it is further

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number, are: (i) Apache Energy Services, LLC (4404); (ii) Aqua Handling of Texas, LLC (4480); (iii) HII Technologies, Inc. (3686); (iv) Sage Power Solutions, Inc. fka KMHVC, Inc. (1210); and (v) Hamilton Investment Group, Inc. (0150).

<sup>2</sup> All capitalized terms not expressly defined herein shall have the meaning ascribed to them in the Motion.

FOUND that the notification procedures and restrictions on certain transfers of HII Stock are necessary and proper to preserve the NOLs and are therefore in the best interests of the Debtors, their estates, and their creditors; and it is further

FOUND that the relief requested in the Motion is authorized under sections 105(a) and 362 of the Bankruptcy Code; and it is further

THEREFORE, IT IS:

ORDERED that the Motion is granted as provided herein; and it is further

ORDERED that the provisions of this Order shall be effective, *nunc pro tunc*, to the Motion Date; and it is further

ORDERED that all objections to the Motion not previously withdrawn are overruled; and it is further

ORDERED that any acquisition or disposition of HII Stock in violation of the restrictions set forth herein shall be null and void *ab initio* as an act in violation of the automatic stay prescribed in section 362 of the Bankruptcy Code and pursuant to this Court's equitable power prescribed in section 105(a) of the Bankruptcy Code; and it is further

ORDERED that the following procedures and restrictions shall apply to trading in HII Stock and are approved:

(a) ***HII Stock Ownership, Acquisition, and Disposition***

- (1) Notice of Substantial HII Stock Ownership. Any person or Entity (as such term is defined in section 382 of the Tax Code, including persons acting pursuant to a formal or informal understanding among themselves to make a coordinated acquisition) that beneficially owns, at any time on or after the Motion Date, HII Stock in an amount sufficient to qualify such person or Entity as a Substantial Equityholder (as hereinafter defined) shall file with the Court, and serve upon the Debtors, and the attorneys for the Debtors, a Notice of Substantial Stock Ownership (a "Substantial Ownership Notice"), in the form annexed hereto as **Exhibit C**, which describes specifically and in detail the HII Stock ownership of such person or Entity, on or before the date that is the later of: (a) ten (10) days after the entry of the Order, and (b) ten (10) days after that person or Entity qualifies as a Substantial Equityholder. At the holder's election, the Substantial Ownership Notice to be filed with the Court (but not such notice served upon the Debtors and the attorneys for the Debtors) may be redacted to exclude such holder's taxpayer identification number and the number of shares of HII Stock that such holder beneficially owns.
- (2) Acquisition of HII Stock or Options. At least fifteen (15) business days prior to the proposed date of any transfer of equity securities (including

Options, as hereinafter defined, to acquire such securities) that would result in an increase in the amount of HII Stock beneficially owned by any person or Entity that currently is or subsequently becomes a Substantial Equityholder or that would result in a person or Entity becoming a Substantial Equityholder (a “Proposed Equity Acquisition Transaction”), such person, Entity or Substantial Equityholder (a “Proposed Equity Transferee”) shall file with the Court, and serve upon the Debtors and the attorneys for the Debtors, a Notice of Intent to Purchase, Acquire, or Otherwise Accumulate HII Stock (an “Equity Acquisition Notice”), in the form annexed hereto as **Exhibit D**, which describes specifically and in detail the proposed transaction in which HII Stock is to be acquired. At the holder’s election, the Equity Acquisition Notice that is filed with the Court (but not such notice served upon the Debtors and the attorneys for the Debtors) may be redacted to exclude such holder’s taxpayer identification number and the number of shares of HII Stock that such holder beneficially owns and proposes to purchase or otherwise acquire.

- (3) Disposition of HII Stock or Options. At least fifteen (15) business days prior to the proposed date of any transfer or other disposition of equity securities (including Options to acquire such securities) that would result in a decrease in the amount of HII Stock beneficially owned by a Substantial Equityholder or that would result in a person or Entity ceasing to be a Substantial Equityholder (a “Proposed Equity Disposition Transaction,” and together with a Proposed Equity Acquisition Transaction, a “Proposed Equity Transaction”), such person, Entity, or Substantial Equityholder (a “Proposed Equity Transferor”) shall file with the Court, and serve upon the Debtors and the attorneys for the Debtors, a Notice of Intent to Sell, Trade, or Otherwise Transfer HII Stock (an “Equity Disposition Notice,” and together with an Equity Acquisition Notice, an “Equity Trading Notice”), in the form annexed hereto as **Exhibit E**, which describes specifically and in detail the proposed transaction in which HII Stock would be transferred. At the holder’s election, the Equity Disposition Notice that is filed with the Court (but not such notice served upon the Debtors and the attorneys for the Debtors) may be redacted to exclude such holder’s taxpayer identification number and the number of shares of HII Stock that such holder beneficially owns and proposes to sell or otherwise transfer.
- (4) Objection Procedures. The Debtors shall have ten (10) business days after the filing of an Equity Trading Notice (the “Equity Objection Deadline”) to file with the Court and serve on a Proposed Equity Transferee or a Proposed Equity Transferor, as the case may be, an objection to any proposed transfer of equity securities (including Options to acquire such securities) described in such Equity Trading Notice on the grounds that such transfer may adversely affect the Debtors’ ability to utilize the NOLs (an “Equity Objection”) as a result of an ownership change under section 382 or section 383 of the Tax Code.

- (i) If the Debtors file an Equity Objection by the Equity Objection Deadline, then the Proposed Equity Transaction shall not be effective unless approved by a final and nonappealable order of this Court.
  - (ii) If the Debtors do not file an Equity Objection by the Equity Objection Deadline, or if the Debtors provide written authorization to the Proposed Equity Transferee or the Proposed Equity Transferor, as the case may be, approving the Proposed Equity Transaction, prior to the Equity Objection Deadline, then such Proposed Equity Transaction may proceed solely as specifically described in the Equity Trading Notice. Any further Proposed Equity Transaction must be the subject of additional notices as set forth herein with an additional fifteen (15) business day waiting period.
- (5) Unauthorized Transactions in HII Stock or Options. Effective as of the date of the filing of this Motion and until further order of the Court to the contrary, any acquisition, disposition or other transfer of equity securities (including Options to acquire such securities) of the Debtors in violation of the procedures set forth herein shall be null and void *ab initio* as an act in violation of the automatic stay under sections 105(a) and 362 of the Bankruptcy Code.
- (6) Definitions. For purposes of this Motion and the Order, the following terms have the following meanings:
- (i) Substantial Equityholder. A “Substantial Equityholder” is any person or Entity that beneficially owns at least 2,578,673 shares of HII Stock (representing approximately 4.5% of all issued and outstanding shares of HII Stock as of May 20, 2015).
  - (ii) Beneficial Ownership. “Beneficial ownership” (or any variation thereof of HII Stock and Options to acquire HII Stock) shall be determined in accordance with applicable rules under section 382 of the Tax Code, the U.S. Department of Treasury regulations (“Treasury Regulations”) promulgated thereunder and rulings issued by the Internal Revenue Service, and, thus, to the extent provided in those rules, from time to time shall include, without limitation, (A) direct and indirect ownership (*e.g.*, a holding company would be considered to beneficially own all stock owned or acquired by its subsidiaries), (B) ownership by a holder’s family members and any group of persons acting pursuant to a formal or informal understanding to make a coordinated acquisition of stock, and (C) in certain cases, the ownership of an Option to acquire HII Stock.
  - (iii) Option. An “Option” to acquire stock includes any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock, or similar interest regardless of whether it is contingent or otherwise not currently exercisable.

(iv) HII Stock. “HII Stock” shall mean HII common stock.<sup>3</sup> For the avoidance of doubt, by operation of the definition of beneficial ownership, an owner of an Option to acquire HII Stock may be treated as the owner of such HII Stock.

**(b) *Noncompliance with the Trading Procedures.***

Any purchase, sale, or other transfer of equity securities in the Debtors in violation of the procedures set forth herein shall be null and void *ab initio* and shall confer no rights on the transferee.

**(c) *Debtors’ Right to Waive.***

The Debtors may waive, in writing, any and all restrictions, stays, and notification procedures contained in this Motion.

; and it is further

ORDERED that any person or Entity acquiring and/or disposing of HII Stock in violation of the restrictions set forth herein, or failing to comply with the “Notice of Substantial Stock Ownership,” “Equity Acquisition Notice,” and “Equity Disposition Notice” requirements, as may be the case, shall be subject to such sanctions as the Court may consider appropriate pursuant to this Court’s equitable power prescribed in section 105(a) of the Bankruptcy Code; and it is further

ORDERED that the notices substantially in the form annexed to the Motion as Exhibit C, Exhibit D, and Exhibit E are approved; and it is further

ORDERED that nothing in this Order shall preclude any party-in-interest from seeking appropriate relief from the provisions of this Order; and it is further

ORDERED that within three (3) business days of the entry of this Order, the Debtors shall serve notice of the entry of this Order on all parties on the Debtors’ Master Service List. In addition, within three (3) business days of the entry of this Order, the Debtors shall cause Garden City to send the Order to all registered holders of HII Stock. Upon receipt of the Order, all registered holders shall be required to provide the Order to all beneficial holders for whose accounts such registered holder holds. The Debtors shall also post the Order on Garden City’s website at <http://www.gardencitygroup.com/cases/HII>; and it is further

ORDERED that nothing herein shall preclude any person or Entity desirous of purchasing or transferring any interest from requesting relief from this Order in this Court subject to the Debtors’ rights to oppose such relief; and it is further

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<sup>3</sup> In May 2015, HII closed on a Series B convertible preferred equity financing, which was to convert into debt upon default under the primary loan agreements. Thus, the Series B is not considered equity for the purpose of this Motion. Counsel for the Series B Purchaser has been served with this Motion.

ORDERED that notice of the Motion as provided therein shall be deemed good and sufficient notice of the Motion; and it is further

ORDERED that the requirements set forth in this Order are in addition to the requirements of Bankruptcy Rule 3001(e), applicable securities, corporate, and other laws, and do not excuse compliance therewith; and it is further

ORDERED that the relief granted in this Order is intended solely to permit the Debtors to protect, preserve and maximize the value of its NOLs and other tax attributes. Accordingly, except to the extent the Order expressly conditions or restricts trading in interests in the Debtors, nothing in this Order or in the Motion shall or shall be deemed to prejudice, impair or otherwise alter or affect the rights of any holders of interests in the Debtors, including in connection with the treatment of any such interests under any plan of reorganization or any applicable bankruptcy court order; and it is further

ORDERED that this Court shall retain jurisdiction to hear and determine all matters arising from or related to this Order.

SIGNED: \_\_\_\_\_, 2015.

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UNITED STATES BANKRUPTCY JUDGE



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION**

**In re:** § **Chapter 11**  
 §  
**HII TECHNOLOGIES, INC., et al.<sup>1</sup>** § **15-60070 (DRJ)**  
**Debtors** § **(Jointly Administered)**

**NOTICE OF SUBSTANTIAL STOCK OWNERSHIP**

PLEASE TAKE NOTICE THAT [Name of Shareholder] (the “Filer”) hereby provides notice (the “Notice”), that, as of [Date], [Name of Shareholder] beneficially owns \_\_\_\_\_ shares of HII Technologies, Inc. (“HII”) common stock (the “HII Common Stock”), and/or Options to acquire \_\_\_\_\_ shares of HII Common Stock, which represents \_\_\_\_% of the total amount of the HII Common Stock currently outstanding.

PLEASE TAKE FURTHER NOTICE THAT the taxpayer identification number of [Name of Shareholder] is \_\_\_\_\_.

PLEASE TAKE FURTHER NOTICE THAT the following table sets forth the following information:

1. In the case of shares of HII Common Stock and/or Options to acquire HII Common Stock that are owned directly by the Filer, the table below sets forth (i) the number of such shares and/or Options; and (ii) the date(s) on which such shares and/or Options were acquired.

2. In the case of shares of HII Common Stock and/or Options to acquire HII Common Stock that are not owned directly by the Filer but are nonetheless beneficially owned by the Filer, the table below sets forth (i) the name(s) of each record or legal owner of such shares and/or Options beneficially owned by the Filer, (ii) the number of such shares and/or Options; and (iii) the date(s) on which such shares and/or Options were acquired.

<i>Name of Owner</i>	<i>Number of Shares of HII Common Stock Owned</i>	<i>Number of Shares subject to Options Owned</i>	<i>Date(s) Acquired</i>

(Attach additional page if necessary)

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: (i) Apache Energy Services, LLC (4404); (ii) Aqua Handling of Texas, LLC (4480); (iii) HII Technologies, Inc. (3686); (iv) Sage Power Solutions, Inc. fka KMHVC, Inc. (1210); and (v) Hamilton Investment Group, Inc. (0150).

PLEASE TAKE FURTHER NOTICE that, under penalties of perjury, [Name of Shareholder] hereby declares that it has examined this Notice and accompanying attachments (if any), and, to the best of its knowledge and belief, this Notice and any attachments which purport to be part of this Notice are true, correct and complete.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order,<sup>2</sup> this Notice is being filed with the Court and served upon the Debtors and the attorneys for the Debtors.

For purposes of this Notice, (i) “beneficial ownership” (or any variation thereof of HII Common Stock and Options to acquire HII Common Stock) shall be determined in accordance with applicable rules under section 382 of Internal Revenue Code of 1986, as amended, the U.S. Department of Treasury regulations (“Treasury Regulations”) promulgated thereunder and rulings issued by the Internal Revenue Service, and, thus, to the extent provided in those rules, from time to time shall include, without limitation, (A) direct and indirect ownership (e.g., a holding company would be considered to beneficially own all stock owned or acquired by its subsidiaries), (B) ownership by a holder’s family members and any group of persons acting pursuant to a formal or informal understanding to make a coordinated acquisition of stock and (C) in certain cases, the ownership of an Option (as defined below) to acquire HII Common Stock; and (ii) an “Option” to acquire stock includes any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock or similar interest, regardless of whether it is contingent or otherwise not currently exercisable.

[IF APPLICABLE] I am represented by [name of the law firm], [address], [phone], (Attn: [name]).

Respectfully submitted,

\_\_\_\_\_  
(Name of Shareholder)

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Tel: \_\_\_\_\_

Fax: \_\_\_\_\_

Date: \_\_\_\_\_

<sup>2</sup> All capitalized terms not expressly defined herein shall have the meaning ascribed to them in the Motion.

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION**

<b>In re:</b>	§	<b>Chapter 11</b>
	§	
<b>HII TECHNOLOGIES, INC., et al.<sup>1</sup></b>	§	<b>15-60070 (DRJ)</b>
<b>Debtors</b>	§	<b>(Jointly Administered)</b>

**NOTICE OF INTENT TO PURCHASE, ACQUIRE OR  
OTHERWISE ACCUMULATE HII STOCK**

PLEASE TAKE NOTICE THAT [Name of Prospective Acquirer] (the “Filer”) hereby provides notice (the “Notice”) of (i) its intention to purchase, acquire or otherwise accumulate directly one or more shares of HII Technologies, Inc. (“HII”) common stock (“HII Common Stock”) and/or Options (as defined below) to acquire shares of HII Common Stock and/or (ii) a proposed purchase or acquisition of shares of HII Common Stock and/or Options to acquire HII Common Stock that would result in an increase in the number of shares of HII Common Stock or Options to acquire HII Common Stock that are beneficially owned (as defined below) by the Filer (any proposed transaction described in (i) or (ii), a “Proposed Transfer”).

PLEASE TAKE FURTHER NOTICE THAT the following table sets forth the following information:

1. If the Proposed Transfer is directly by the Filer of shares of HII Common Stock and/or Options to acquire HII Common Stock, the table below sets forth (i) the number of shares of HII Common Stock and/or Options to acquire HII Common Stock proposed to be purchased or acquired; and (ii) the date(s) of such Proposed Transfer.

2. If the Proposed Transfer is by a person or Entity other than the Filer, but the Proposed Transfer nonetheless would increase the number of shares of HII Common Stock and/or Options to acquire HII Common Stock that are beneficially owned by the Filer, the table below sets forth (i) the name(s) of each such person or Entity; (ii) the number of shares and/or Options that is the subject of the Proposed Transfer to be so purchased or acquired; and (iii) the date(s) of such Proposed Transfer.

<i>Name of Acquirer</i>	<i>Number of Shares of HII Common Stock to be Transferred</i>	<i>Number of Shares Subject to Options to be Transferred</i>	<i>Date(s) of Proposed Transfer</i>

(Attach additional page if necessary)

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: (i) Apache Energy Services, LLC (4404); (ii) Aqua Handling of Texas, LLC (4480); (iii) HII Technologies, Inc. (3686); (iv) Sage Power Solutions, Inc. fka KMHVC, Inc. (1210); and (v) Hamilton Investment Group, Inc. (0150).

PLEASE TAKE FURTHER NOTICE THAT the following table summarizes the Filer’s beneficial ownership of HII Common Stock and/or Options to acquire HII Common Stock assuming the Proposed Transfer is approved and consummated as described above. The table sets forth, as of immediately following the Proposed Transfer, (i) the number of Shares of HII Common Stock (or Options to acquire HII Common Stock) that would be owned directly by the Filer and (ii) in the case of any beneficial ownership by the Filer of shares and/or Options that would be owned by another person or Entity as record/legal owner, the name(s) of each prospective record/legal owner and the number of shares and/or Options that would be owned by each such record/legal owner:

<i>Name of Owner</i>	<i>Number of Shares of HII Common stock to be Owned</i>	<i>Number of Shares subject to Options to be Owned</i>

(Attach additional page if necessary)

PLEASE TAKE FURTHER NOTICE THAT if the Proposed Transfer is directly by the Filer and such Proposed Transfer would result in (i) an increase in the beneficial ownership of shares of HII Common Stock and/or Options to acquire HII Common Stock by a person or Entity (other than the Filer) that currently is a Substantial Equityholder or (ii) a person or Entity (other than the Filer) becoming a Substantial Equityholder, the following table sets forth (i) the name of each such person or Entity; (ii) the number of shares of HII Common Stock and/or Options to acquire HII Common Stock that are beneficially owned by such person or Entity prior to the Proposed Transfer; and (iii) the number of shares of HII Common Stock and/or Options to acquire HII Common Stock that would be beneficially owned by such person or Entity immediately following the Proposed Transfer.

<i>Name of beneficial owner</i>	<i>Number of Shares/Options prior to Proposed Transfer</i>	<i>Number of Shares/Options following Proposed Transfer</i>

(Attach additional page if necessary)

PLEASE TAKE FURTHER NOTICE THAT the taxpayer identification number of the Filer is \_\_\_\_\_.

PLEASE TAKE FURTHER NOTICE that, under penalties of perjury, the Filer hereby declares that it has examined this Notice and accompanying attachments (if any), and, to the best of its knowledge and belief, this Notice and any attachments which purport to be part of this Notice are true, correct and complete.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Order, this Notice is being filed with the Court<sup>2</sup> and served upon the Debtors and the attorneys for the Debtors.

PLEASE TAKE FURTHER NOTICE that the Debtors have **ten (10) business days** after the filing of this Notice to object to the Proposed Transfer described herein. If the Debtors file an objection, such Proposed Transfer will not be effective unless approved by a final and nonappealable order of the Court. If the Debtors do not object within such ten (10) business day period, or if the Debtors provide written authorization approving the Proposed Transfer prior to the end of such ten (10) business day period, then such Proposed Transfer may proceed solely as specifically described in this Notice.

PLEASE TAKE FURTHER NOTICE that any further transactions that may result in the Filer increasing its beneficial ownership of shares of HII Common Stock and/or Options to acquire HII Common Stock will each require an additional notice filed with the Court to be served in the same manner as this Notice.

For purposes of this Notice, (i) “beneficial ownership” (or any variation thereof of HII Common Stock and Options to acquire HII Common Stock) shall be determined in accordance with applicable rules under section 382 of Internal Revenue Code of 1986, as amended, the U.S. Department of Treasury regulations (“Treasury Regulations”) promulgated thereunder and rulings issued by the Internal Revenue Service, and, thus, to the extent provided in those rules, from time to time shall include, without limitation, (A) direct and indirect ownership (e.g., a holding company would be considered to beneficially own all stock owned or acquired by its subsidiaries), (B) ownership by a holder’s family members and any group of persons acting pursuant to a formal or informal understanding to make a coordinated acquisition of stock and (C) in certain cases, the ownership of an Option (as defined below) to acquire HII Stock; (ii) an “Option” to acquire stock includes any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock or similar interest, regardless of whether it is contingent or otherwise not currently exercisable, (iii) “Substantial Equityholder” means any person or Entity that beneficially owns a number of shares of HII Common Stock representing 4.5% or more of all issued and outstanding shares HII Common Stock; and (iv) “Entity” has the meaning given to it in Treasury Regulations section 1.382-3(a) and shall include persons acting pursuant to a formal or informal understanding among themselves to make a coordinated acquisition.

[IF APPLICABLE] I am represented by [name of the law firm], [address], [phone], (Attn: [name]).

Respectfully submitted,

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(Name of Prospective Acquirer)

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<sup>2</sup> All capitalized terms not expressly defined herein shall have the meaning ascribed to them in the Motion.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Tel: \_\_\_\_\_

Fax: \_\_\_\_\_

Date: \_\_\_\_\_

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
VICTORIA DIVISION**

<b>In re:</b>	§	<b>Chapter 11</b>
	§	
<b>HII TECHNOLOGIES, INC., et al.<sup>1</sup></b>	§	<b>15-60070 (DRJ)</b>
<b>Debtors</b>	§	<b>(Jointly Administered)</b>

**NOTICE OF INTENT TO SELL, TRADE, OR OTHERWISE TRANSFER HII STOCK**

PLEASE TAKE NOTICE THAT [Name of Prospective Seller] (the “Filer”) hereby provides notice (the “Notice”) of (i) its intention to sell, trade or otherwise transfer directly one or more shares of HII Technologies, Inc. (“HII”) common stock (“HII Common Stock”) and/or Options (as defined below) to acquire shares of HII Common Stock and/or (ii) a proposed purchase or acquisition of shares of HII Common Stock and/or Options to acquire HII Common Stock that would result in a decrease in the number of shares of HII Common Stock or Options to acquire HII Common Stock that are beneficially owned (as defined below) by the Filer (any proposed transaction described in (i) or (ii), a “Proposed Transfer”).

PLEASE TAKE FURTHER NOTICE THAT the following table sets forth the following information:

1. If the Proposed Transfer is directly by the Filer, the table below sets forth (i) the number of shares of HII Common Stock and/or Options to acquire HII Common Stock proposed to be sold or transferred; and (ii) the date(s) of such Proposed Transfer.

2. If the Proposed Transfer is by a person or Entity other than the Filer, but the Proposed Transfer nonetheless would decrease the number of shares of HII Common Stock and/or Options to acquire HII Common Stock that are beneficially owned by the Filer, the table below sets forth (i) the name(s) of each such person or Entity; (ii) the number of shares and/or Options that are the subject of the Proposed Transfer; and (iii) the date(s) of such Proposed Transfer.

<i>Name of Transferor</i>	<i>Number of Shares of HII Common Stock to be Transferred</i>	<i>Number of Shares Subject to Options to be Transferred</i>	<i>Date(s) of Proposed Transfer</i>

(Attach additional page if necessary)

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: (i) Apache Energy Services, LLC (4404); (ii) Aqua Handling of Texas, LLC (4480); (iii) HII Technologies, Inc. (3686); (iv) Sage Power Solutions, Inc. fka KMHVC, Inc. (1210); and (v) Hamilton Investment Group, Inc. (0150).

PLEASE TAKE FURTHER NOTICE THAT the following table summarizes the Filer’s beneficial ownership of HII Common Stock and/or Options to acquire HII Common Stock assuming the Proposed Transfer is approved and consummated as described above. The table sets forth, as of immediately following the Proposed Transfer, (i) the number of Shares of HII Common Stock (or Options to acquire HII Common Stock) that would be owned directly by the Filer and (ii) in the case of any beneficial ownership by the Filer of shares and/or Options that would be owned by another person or Entity as record/legal owner, the name(s) of each prospective record/legal owner and the number of shares and/or Options that would be owned by each such record/legal owner:

<i>Name of Owner</i>	<i>Number of Shares of HII Common stock to be Owned</i>	<i>Number of Shares subject to Options to be Owned</i>

(Attach additional page if necessary)

PLEASE TAKE FURTHER NOTICE THAT if the Proposed Transfer is directly by the Filer and such Proposed Transfer would result in (i) a decrease in the beneficial ownership of shares of HII Common Stock and/or Options to acquire HII Common Stock by a person or Entity (other than the Filer) that currently is a Substantial Equityholder or (ii) a person or Entity (other than the Filer) ceasing to be a Substantial Equityholder, the following table sets forth (i) the name of each such person or Entity; (ii) the number of shares of HII Common Stock and/or Options to acquire HII Common Stock that are beneficially owned by such person or Entity prior to the Proposed Transfer; and (iii) the number of shares of HII Common Stock and/or Options to acquire HII Common Stock that would be beneficially owned by such person or Entity immediately following the Proposed Transfer.

<i>Name of beneficial owner</i>	<i>Number of Shares/Options prior to Proposed Transfer</i>	<i>Number of Shares/Options following Proposed Transfer</i>

(Attach additional page if necessary)

PLEASE TAKE FURTHER NOTICE THAT the taxpayer identification number of the Filer is \_\_\_\_\_.

PLEASE TAKE FURTHER NOTICE that, under penalties of perjury, the Filer hereby declares that it has examined this Notice and accompanying attachments (if any), and, to the best of its knowledge and belief, this Notice and any attachments which purport to be part of this Notice are true, correct and complete.



PLEASE TAKE FURTHER NOTICE that, pursuant to the Order, this Notice is being filed with the Court<sup>2</sup> and served upon the Debtors and the attorneys for the Debtors.

PLEASE TAKE FURTHER NOTICE that the Debtors have **ten (10) business days** after the filing of this Notice to object to the Proposed Transfer described herein. If the Debtors file an objection, such Proposed Transfer will not be effective unless approved by a final and nonappealable order of the Court. If the Debtors do not object within such ten (10) business day period, or if the Debtors provide written authorization approving the Proposed Transfer prior to the end of such ten (10) business day period, then such Proposed Transfer may proceed solely as specifically described in this Notice.

PLEASE TAKE FURTHER NOTICE that any further transactions that may result in the Filer increasing its beneficial ownership of shares of HII Common Stock and/or Options to acquire HII Common Stock will each require an additional notice filed with the Court to be served in the same manner as this Notice.

For purposes of this Notice, (i) “beneficial ownership” (or any variation thereof of HII Common Stock and Options to acquire HII Common Stock) shall be determined in accordance with applicable rules under section 382 of Internal Revenue Code of 1986, as amended, the U.S. Department of Treasury regulations (“Treasury Regulations”) promulgated thereunder and rulings issued by the Internal Revenue Service, and, thus, to the extent provided in those rules, from time to time shall include, without limitation, (A) direct and indirect ownership (e.g., a holding company would be considered to beneficially own all stock owned or acquired by its subsidiaries), (B) ownership by a holder’s family members and any group of persons acting pursuant to a formal or informal understanding to make a coordinated acquisition of stock and (C) in certain cases, the ownership of an Option (as defined below) to acquire HII Stock; (ii) an “Option” to acquire stock includes any contingent purchase, warrant, convertible debt, put, stock subject to risk of forfeiture, contract to acquire stock or similar interest, regardless of whether it is contingent or otherwise not currently exercisable, (iii) “Substantial Equityholder” means any person or Entity that beneficially owns a number of shares of HII Common Stock representing 4.5% or more of all issued and outstanding shares HII Common Stock; and (iv) “Entity” has the meaning given to it in Treasury Regulations section 1.382-3(a) and shall include persons acting pursuant to a formal or informal understanding among themselves to make a coordinated acquisition.

[IF APPLICABLE] I am represented by [name of the law firm], [address], [phone], (Attn: [name]).

Respectfully submitted,

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(Name of Filer)

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<sup>2</sup> All capitalized terms not expressly defined herein shall have the meaning ascribed to them in the Motion.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Tel: \_\_\_\_\_

Fax: \_\_\_\_\_

Date: \_\_\_\_\_